" SUPPLEM COURT.

THE PERSON NAMED IN Thursday, July 11.

The Keep vs J. H. Robertson. When or was reached on the calling of ier the Erst day of the term

STATE OF THE STATE OF The Corr responded that it would ga- described, which was not alleged, that the Attorney-General had not the burgerry of a pulle prosequi-

American femoral to decline to prose- manded by the law to prosecute

pession's inter of the Conterts . NT THE CHEST

therees seems that at the common are the Atterney General of England much his sain propossibility to enter a olle priesqui le nix doubtful and has on more questioned by this Court.

But the estimon law is not in force as lingish colour which has brought out the law of England to be in force here moretus modified by express statute. The use of this country is found in our end that statutes and in the precedents our, in which it is allowed. Section must the civil Code, "to cite and adopt in maximum and principles of the adcontinue and courses law of countries and always the Noman or los el far as the more may be and and entire and this King-Plus thermise higs been fremay open consideration of what was affice was not tilled.

In 1850 (Civil Code, Sections 1080-

has the Athenery-General by himself of the buyety, when destring to polle pros. a case after undertured found, asks leave usons are not always given publicly in They are frequently presented to the Judge in his office, and upon the motion being made in Court, the Court in response sumetimes states says that he satisfactory reasons given the noile prise may be entered. I state this to be the custom of the Court upon my cen knowledge as a Justice for tweeze years and as a Poputy of the Atperson General for four years, and upon inquire of my bestleren on the Beach, pan of whom have held the office of amorear-lieneral, and who say that the gradies too been uniformly as I have

Our statute of Criminal Procedure Act of To [L. p. 238] provides for the incharge without prosecution of persure impresent under committal for trial for any offerse, by the Attorneydeperate granting a certificate to the luctions of a Justice of the Supreme Occur that he declines to present an in-distance to the specified case, whereupon the Justice or Justices shall therempon bases to the Marshal a warrant of include of such person from custody This statute was enacted in 1876, and

as it provides only this method of discharge upon the sole responsibility and ministry of the Attorney-General, I think it may be inferred that the existng practice was not intended by the recarge to be varied in other respects. our les control over a contingmost of a case by Section 35 of the

Procedure Act of 1876. "If the least before which any person is inicised shall, upon the application of such person or otherwise, he of opinion that m cought to be allowed further time to slead, cir. " the Court may grant further me or continue to another term, cernamely windows the control of the Attor-

power to the Court to change the venue f any criminal proceedings to any other Court of Record, for such reasons as the incline of the case thay require, and submer to such conditions as the Court may in discretion impose. In regard to all which the Attorney-General would be learn but the decision and control would

The hit of 1806, now in force, defining the distinct of the Actorney-General (C p. 815) require blm to be vigilant and on in detecting offenders against the awe and to prosecute them with diligence. The law Sections 1 and 2 of the Act of tate requires the Attorney-General to remail the indistment before the next ensuing term after the commitment to the Judge who shall after examination metaly upon each hill of indictment whether he finds the same a true bill or

What is the examination which the Judge is required to make?

There is no grand jury here and to some extent the Judge performs its sent was required which it refused to metions. The exidence taken before the committing magistrate is submitted to him, and he hours statements from and makes inquiry of the Attorney-General to the extent of ascertatoing if it is a case which cought to be tried. In the supposed is case of its appearing that the enthence was friendors and entirely un supporting the charge, he would not find it a true bill, and the arcused could not be put on trial. Or in the supposable case that the explence being examined showed a case, say, of emberriement when the indictment charged forgery, he

Again if the form of the indictment

form in no wise precludes or prejudices that ruling. any showing by defendant's counsel

tions to quash or demur. I say this without besitation on the part | ment. I express we opinion upon the as year he desired to er of every ladge living and dead who has

Examining the statutes previous to those now in existence-above refergiving as a reason and to-the first is the stabile of the executive de I have been shown be styled partments, and by which the office of Attorney-General was first constituted and his duties prescribed pages 264 et. seq., Section VIII.), prescribes that marine of granting leave to every prisoner committed for trial shall the proseque under advise by arranged upon an indicament allowedby the Julies. And (Section 1X.) after plea the said Attorneycoat it did not deem the ab- General shall, unless a postporement be tion witness a sufficient reason granted for cause by the Court, proceed being my the case to trial if he to make good by proof all or any of the were put the sold witness on which the counts in said indicament. Soft appears therefore declined leave of Court sole and exclusive control, now claimed. of the prosecutions, for he could not con-The maker, Alfred S. Hartwell Est time a case unless by leave of the Court. requested the Court that he be granted for cause shown. An absolute blessed to appear in this matter. On power to continue a case, without cause the sec. of July Mr. Harrwell presented shown and without leave, is equivalent at the Court as "Coursel let to a power to cootings and not prosecute the America-General, in the right of the at all. This he had not, but was com-

In a single instance under this statute werther complete inches anding of the was the power given to the Attorneyare not taken by the learned counsel (seneral to enter a noile prosequi. (Secwhen a writ of habeas in my chambers, and being without inon in tall on the fifth part of this corpus shall have been issued by any Court of Justice, to inquire by examination of witnesses into the cause of the The proposition of the counsel for the ingulity of the imprisonment of any all ask him to do so. leged delinquent or criminal awaiting his trial the Attorney-General

and all states which have adopted this shall attend to see that the alleged depart of the common law has the right limpoent or criminal be not enlarged without just cause. He shall represent the prosecution in all such cases and he may, when the public interests require it, enter nolle prosequi against a sussuch in this Kingdom. This is not an pected person. This statute is nearly equivalent to the statute of 1876 above cited. The rule of expressio unius est exclusio alterius well applies here. The I think the interest of justice will be the authority is given expressly in a defined instance, vir., of preliminary loquity for commitment and is not given otherwise. The instance allowed is of a case in is entirely free from bias. not not neder indistingst found. The Attorney-General shall proscente.

By a joint resolution of the Legislature in 1846 scheeperst to the passage of the is given the Calimet to appoint other And along the new ported new Attender-General-the liber Atduty and power of the Attended Green burney-Greeners. Mr. Bigger, it appears ral he through or assumed or with- was about to leave the kington and his

1986; the law provided only for district work and of the Cotton Cours has been attorneys, an Attorney General not being constituted by the Constitution of 1852 These district altorneys were appointed they were commissioned for the term of two years, unless sooner removed by the Justices of the Supreme Court. They were required to prosecute offenses with No mention is made of a right to nolle prosequi.

Restatute in 1800 the system of have ing an Attorney-tieneral was restored. He was appointed by the King for a term of two years unless somer removed the King. His duties were prescribed by the district attorneys in Sections 1080-No power is granted to notile pro-

Sy the Constitution of 1864 an Attorney General was established, and he was nade a member of the King's Cabinet (Art. 42); and in 1863 an Act was passed defining his duties. It is almost throughout in the same words as the Act of 1862, His duties are again referred to Sections 1080-1095. The Act would seem to have been passed solely to state his position being appointed by virtue of an aricle of the Constitution, but although thus placed for the first time under t Constitution and made a member of His Majesty's Cabinet, his duties in relation prosecutions, and his status, rights, privileges and powers in the courts are unchanged from those of the officer who

was created by statute only. From this review of all the statutes touching the rights and duties of the Attorney General, I am of the opinion that the procedure which I have stated to be the custom of the Court and of the Attorney-General, is in accordance with our law, and accords with the interpretation hitherto given by the Court and the Attorney-General.

It is a well established precedent of practice based on the law. I cannot set it aside. If it does not now and further commend itself the Legislature can enact a statute authorizing another procedure

The counsel for the Attorney-General Section 13 of the same Act gives the says in argument: "If the indicial power can be extended to requiring the Attorney-General cute any specified case on penalty of fine or imprisonment this would not permit the exercise of executive and indicial powers to be preserved distinct-it would annul the discretionary and voluntury exercise of executive power, so far as the Attorney-General is concerned." This in my view is a misap-

probension of the matter in discussion. The Court has not ordered the prose cution of this case. It cannot and it will not do so. It has simply refused to approve and allow a motion for noile prosequi upon the reason stated.

It has not and will not "fine or imprison an Attorney-General" for contempt by reason of not prosecuting a

It will be observed that I do not agree in terms with the statement in the opening of the argument of counsel-"The Attorney-General having not pros'd the . the Court said its con-

The Court said it would take time to consider (the reason offered) and it could not treat the motion as made otherwise than in accordance with the established precedent of practice and procedure. This difference in statement is however only the difference which constitutes this controversy on the part

of the Attorney-General and his counsel. It is not a question of veracity as to facts. Having thus given the opinion of the ourt upon the abstract question argued would not approve the indictment for

was obviously defective though not leave to nolle pros. the case of Robertcharging a different offense from that son, that ruling might stand. But as presented in the evidence he would this particular case has been virtually probably not find it a true bill. The brought up by allowing the further arguingent as to meet to be made I have reconsidered Voltage

I have examined the evidence given that the indistment is faulty, and mo-tions to quasic or demnir. In the previous trial, excepting that of Magoney the absent witness. There are The Court's approval of the bill as six witnesses besides him. On their being buinded on evidence in no wise testimony, if given in a magistrate's identifies the Court with the prosecution. proper or probable result of a trial. It is only an opinion that it is a case to be

when it is called for trial, the Attorney-General, being present in person or by deputy, does not prosecute, it will stand not prosecuted in fact, but without the entry of nolle prosequi. The Attorney-General will take his own course

It it shall proceed to trial, I will ask one of my brethren on the Bench to hold the trial, not because I deem myself to have, or to have indicated, any bias in the defendant's case, by withholding my concurrence to dismissing him without trial, but because by the collision which has arisen from this case, between the Court and the Attorney-General, a sensitive condition of public feeling has been puted that my rulings were over strict against the defer but, urging his conviction, or were too invorable from fear of the other imputation. L. McCtill. Justice Supreme Court.

July 11, 1889.

When the foregoing had been read the Court said: Ten minutes before my coming into Court Mr. Hartwell saw me termation of what the decision was, desired me to make a statement. I think he can make it more accurately and I

Mr. Hartwell-I desire to state that the Attorney-General had seen me before and desired me to inform the Court that the prosecution would go on with the case. Mr. Ashford's adeputy informed me that Mr. Ashford desired the case to go on and defendant's counsel are present in Court. In regard to the suggestion that the Court desired one of its brethren to preside at the trial I desire that the Court itself shall sit at the trial. better observed

Mr. Neumann for the defendant-I shall ask that the Court sit, as we think

A large andience was present during general mandate of the law is that the the above proceedings, including the British Commissioner; but the Attorney-General was too ill to attend in

All the parties notified by the Court to be present were there, excepting the

NATIVE HAWAIIANS IN UTAH.

How They are Treated by the Mormons -The Desire of Many to Return to

A young native, named John Kahaanui, who was one of the Hawaiian emigrants to Salt Lake, returned by the by the Justices of the Supreme Court for "Zealandia," having been assisted by each judicial circuit of the Kingdom. our townsman Mr. W. A. Kinney to get home by the Hawalian Consul General. He states that there are about seventy natives there. A letter from Mr. Kinney at Salt Lake to the Consul-General

'As far as I can learn the natives are very well treated by the class of Mormons who still have enough zeal to proselvtize, i. e. the rank religious Mormon but there is a large class of Mormons in the city here who, like many of the des-cendents of the Missionaries at the Islands, are very busy laying up treasure where the moth and rust doth corrupt, etc., and don't look on our kanaka brethren at all, or, if at all, only as next door to the darkey, and to be treated accordingly. Some of the natives get steady work, others do not, and all have to work for their money as they never fid at home. It is not a case of destitution but of homesickness. The Supreme Court of Utah has just held that native Hawaiians are not eligible to American citizenship, and this will greatly depreciate their importing value to the Mor-

We are informed that quite a number of these emigrants desire to return, but have not the means to pay their way. Application has been made to the Consul-General at San Francisco, but it appears that there is not enough of the appropriation for the relief and return of igent Hawalians for this purpose and furthermore that the appropriation is generally understood, to be for the return of shipwrecked seamen who are left abroad without means.

It is not thought to be a proper use of public money to sid homesick people who have voluntarily deserted their country to live abroad. This should serve as a warning to natives not to leave their homes without full knowledge of what they are going to, and full understanding that they cannot rely upon the Government to send for them when they are homesick.

Schertisements.

NOTICE.

NOTICE IS HEREBY GIVEN TO ALL A persons that on the 28th day of June, 1888 a meeting of stockholders of the UNION ICE CO. was held in Honoluju: and that at said meeting it was voted by valid stockholders to accept the Charter of Incorporation granted to them and their associates, under the corporate name and style of the Union Ice Company, on the Bish day of June, 1889, by His Excellency Lorrin A. Thurston, Minister of the In-terior, and that the Corporation under said Charter thereupon organized, and elected the following officers of the Company:

J. S. McGrew President L. C. Abies Vice-President J. H. Fisher Secretary & Treasurer

Notice is further given that pursuant to the terms of said Charter, no shareholder hall individually be liable for the bebts the Corporation beyond the amount which shall be due upon the share or shares held J. H. FISHER,

Secretary. 1278-5t 2-1t Honolulu, July 1, 1889.

NOTICE!

HOLDING AN AUCTIONEER'S LICENSE, I am now prepared to set in that capacity, any where in this District, I will also attend to the collecting of Rents, also of Bills, on this and the other Islands. by counsel, and holding against his contention, and he having made no argument addressed to the discretion of the Court upon its previous ruling to grant

also of Bens, on this and the other lelands.

Leff My terms will be moderate, and I shall by strict attention to hostness, hope to receive a share of the public patronage.

H. B. BAILEY.

Kawaapae, Makawao, Mani, John 14, 1869. CUSTOM HOUSE RETURNS.

Following are the returns of the Collector-General of Customs, showing the second quarter, and also for the first half of the current year. During the past six months there has been a very large increase in the experts of Hawaiian products-especially in sagar, tallow, coffee, and bananas. On the other hand, there But this the Court cannot order. If, has been a considerable decrease in rice, and also in wool; but the decrease on the former, which is nearly one-third, may be accounted for from a much larger home consumption this year.

The total value of Hawaiian exports for the second quarter is \$5,773,239 93, an increase over the corresponding quarter in 1888 of \$1,215,516 58;

Value 10, 97 90, 430 1, 604 20, 278 10, 604 1, 604

The following experts are included in the EAHULUI-Sugar, 21,721,274 pounds; value \$1.140,021.99 HILO-Surar, 5,809,451 pounds, value \$318,-138.99; Rice 100 pounds; value \$341.69.

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The United States steamer Constellation went ashore a mile below Cape Henry in a thick fog. The vessel was broadside to the beach, three hundred yards from shore. Wrecking companies sent vessels to the rescue, but she got off without much injury.

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Bloaters, Fresh Herrings, Jugged Hare,
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LEAVES HONOLULU: ARRIVES AT MONOLULU Tuesday April 9 Wednesday, April 17
Friday, April 19 Saturday, April 27
Tuesday April 30 Wednesday, May 18
Friday, May 10 Saturday, May 18
Tuesday, May 10 Saturday, May 29
Friday, May 31 Saturday, June 29
Friday, June 21 Saturday, June 19
Friday, June 21 Saturday, June 29
Tuesday, July 2 Wednesday, June 19
Friday, June 21 Saturday, June 29
Tuesday, July 2 Wednesday, July 10

STMR. LIKELIKE DAVIES : : : Commander. Leaves Honolulu each week for Khunakakal, Kaholul, Huelo, Keanne, Hana, Hamos and

S. KILAUEA HOU CAMERON : : : Commander.

Leaves Honolulu each week for Pasuhan, Koho STMR. LEHUA

CLARKE : : : : Commander. Leaves Honolulu each week for Hakalau, and STMR. MOKOLII McGREGOR : : : Commander.

Leaves Honolulu esch week for Kaunakakai, Kaunalo, Pukoo, Labaina, Olewain, Lanal, Mos-nui, Halawa, Wallau, Pelekunu, and Kalsupapa. TICKETS per S. S. KINAU for the

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From Symes & Co., Pharmaceutical Chem ists, Medical Hall, Simila, January 5, 1880. To J. T. Davenport, Ksc., 53, Great Russell Street, Bloomsbury, Landon, Pear Sir.—We embrace this opportunity of congratulating you spon the wide-spread reputation this justly esteemed medicine, Dr. J. Collis Browne's Chlorodyne, has carned for itself, not only in Bindostan, but all over the East. As a remedy for general utility, we must question whether a better is imported into the country, and we shall be glad to hear of its finding a place in every Anglo-Indian home. The other brands, we are sorry to say, are now relegated to the native bazaars, and judging from their saic, we fancy their sojourn there will be but evanescent. We could multiply instances ad infinitum of the artraordinary efficacy of Dr. Collis Browne's Chlorodyne in Diarrhea and Dysentory, Spasma Cramps, Neuragina, the Vomiting of the rodyne in Diarrhea and Dysentory, Spasma Cramps, Neuralgia, the Vemiting of Pregnancy, and as a general sedative, that have occured under our personal observation during many years. In Choleraic Diarrhea, and even in the more terrible forms of Cholera itself, we have witnessed its sururisingly controlling and more terrible forms of Cholera itself, we have witnessed its surprisingly controlling power. We have never used any other form of this medicine than Coilis Browne's from a firm Conviction that it is decidely the best and also from a sense of duty we owe to the profession and the public, as we are of opinion that the substitution of any other than Coilis Browne's is a deliberate Breach of Faith on the Fart of the Christ To Freedman and Faith of Pattern of the Chemist to Prescriber and Patient alike. We are Sir, faithfully yours, Symes & Co Members of the Pharm. Society of Great Britian, His Excellency the Viceroy's Chemists.

CAUTION.—Vice-Chancellor Sir W. Page Wood stated that Dr. J. Collis Browne was, andoubtedly, the Inventor of Chlorodyne; that the story of the defendant Freeman was deliberately untrue, which he regretted to say, had been sworn to.—See "The Times," July 12, 1844.

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